

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER WORTHINGTON
and
KENNETH STEPHEN MCGUIRE

Appeal 2007-0947
Application 10/701,039
Technology Center 1700

Decided: February 21, 2007

Before EDWARD C. KIMLIN, JEFFREY T. SMITH, and LINDA M.
GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-19. Claim 1 is
illustrative:

1. A storage wrap material comprising:

(a) a sheet of material comprising one or more layers, and having a first, active side and a second side, said sheet comprising a plurality of protrusions integral with said first active side and said second side, said protrusions comprising from about 30% to about 70% by area of said first active side; and

(b) an adhesive continuously disposed upon said first active side; and, wherein said storage wrap material is linerless and is used by itself to wrap or seal materials.

The Examiner relies upon the following references in the rejection of the appealed claims:

Wilbur	US 2,338,749	Jan. 11, 1944
Kovac	US 3,819,467	June 25, 1974
Reed	US 4,054,697	Oct. 18, 1977

Appellants' claimed invention is directed to a storage wrap material comprising a sheet having an active side that has a plurality of protrusions thereon. The active side of the sheet also has an adhesive continuously disposed thereon. The material is used to wrap or seal other materials.

Appealed claims 1, 2, 4-9, and 11-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over Wilbur. Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilbur in view of Reed, whereas claim 10 stands rejected under § 103 as being unpatentable over Wilbur in view of the admitted prior art. In addition, claims 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilbur in view of Reed and Kovac.

Appellants present a separate substantive argument only for claim 10. Accordingly, claims 1-9 and 11-19 stand or fall together, and, with the exception of claim 10, we will limit our consideration to the rejection of claim 1. Appellants state they will file a terminal disclaimer to resolve the double patenting rejection.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we concur with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections to the extent they are based upon § 103.

Wilbur, like Appellants, discloses a storage wrap material comprising a sheet material having both adhesive and a plurality of protrusions on a first side of the sheet material. Although we do not find that Wilbur provides a clear description of the protrusions comprising from about 30% to about 70% by area of the sheet material within the meaning of § 102, we fully concur with the Examiner that it would have been a matter of obviousness for one of ordinary skill in the art to construct the sheet material of Wilbur having at least 30% of the area comprising protrusions. Manifestly, the sheet material depicted in Wilbur's drawings has protrusions on at least 25% of its area, which percentage is sufficiently close to the claimed "about 30%" to render the claimed amount *prima facie* obvious. Moreover, we agree with the Examiner that it would have been obvious for one of ordinary skill in the art to optimize the amount of area of sheet material to be covered with adhesive and protrusions to maximize the degree of bonding when the sheet material is used as a wrapper or envelope (*see* page 1, col. 2, ll. 34-37). We

note that Appellants have not asserted, let alone established with objective evidence, that the claimed percentage of sheet material comprising protrusions produces an unexpected result. Nor do Appellants base any argument upon objective evidence of nonobviousness.

Appellants separately argue claim 10 which recites that the "storage wrap material is conformable." Appellants maintain that Wilbur relates to laundry wrappers comprised of flexible papers which "are not generally considered to be conformable materials" (sentence bridging pages 4 and 5 of principal Brief). However, as explained by the Examiner, Wilbur expressly teaches that the disclosure is not restricted to tie-bands used by laundries, but that "the invention can also be embodied in a label, wrapper, envelope or other article of flexible sheet material intended for other uses" (page 1, col, 2, ll. 34-37). Accordingly, we agree with the Examiner that one of ordinary skill in the art would have considered the sheet material of Wilbur to be suitable as flexible, conformable sheet material used for wrapping and storing articles.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(iv)(effective Sept. 13, 2004).

AFFIRMED

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